



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/159152

PRELIMINARY RECITALS

Pursuant to a petition filed July 16, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on August 11, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether evidence has been submitted that demonstrates that Petitioner meets the standards necessary for replacement of food purchased with FoodShare benefits due to the loss of food after a storm caused a power outage at her residence.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

||

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Katherine May
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner filed this appeal seeking replacement of lost food purchased with FoodShare benefits. Petitioner indicates that the food was ruined due to a storm related power outage. The outage at

issue here occurred over a 43 hour period from June 30 through July 2, 2014. This was confirmed by WE Energies.

3. Petitioner filed an application for replacement of FoodShare on July 1, 2014. The amount of loss is noted on the application to be \$160.00.
4. Petitioner had also requested replacement FoodShare on June 19, 2014 following a June 16-17 power outage. At hearing Petitioner indicated that it was the denial of the June 30-July 2 outage that is at issue here; that she knew that there was no confirming documentation for the outage earlier in June 2014.
5. Petitioner's FoodShare allotment for the months of June and July 2014 was \$189.00 per month.

DISCUSSION

Food purchased with FoodShare benefits and destroyed in a household misfortune can be replaced up to the actual amount destroyed, but not more than the monthly allotment issued for that month, whichever is less. See, *FoodShare Wisconsin Handbook* § 7.1.1.5; 7 C.F.R. § 274.6(a)(3). The household must report the loss within 10 days, and file a request for replacement FoodShare with the Department's agent. *FoodShare Wisconsin Handbook* § 7.1.1.5. A household misfortune includes, but is not limited to, a disaster, fire or flood, or like event causing destruction of food. 7 C.F.R. § 274.6(f)(2). Finally, the agency must determine that the destruction occurred in a household misfortune or disaster, such as, but not limited to, a fire or flood. 7 C.F.R. § 274.6(f)(2). There are no other stated limitations as to what constitutes a "household misfortune". Nonetheless:

...

(3) *Replacement restrictions.* (i) Replacement issuances shall be provided only if a household timely reports a loss orally or in writing. The report will be considered timely if it is made to the State agency within 10 days of the date food purchased with Program benefits is destroyed in a household misfortune.

...

7 CFR 274.6(a)(3).

State policy follows Federal law:

7.1.1.5 Replacement Issuance for Destroyed Food

Replace food purchased with FoodShare benefits and destroyed in a household misfortune up to the actual amount destroyed but not more than the monthly allotment actually issued to the household that month, whichever is less.

A replacement issuance shall be provided only if a household:

1. Reports the loss orally or in writing to the agency within 10 days of the date the loss occurred.
2. Completes a "Request for Replacement FoodShare Benefits" ([F-00330](#)). This can be completed and dropped off at the agency, mailed, or faxed to the agency, but must be received by the agency within 10 days of when the household reports the loss.

A replacement issuance must be provided to the household within 10 days after report of the loss. Verify the household misfortune through the fire department, police department, a community organization such as the Red Cross, a collateral contact or home visit, etc.

Deny or delay a replacement issuance if available documentation indicates that the household's request for replacement appears to be fraudulent.

Inform the household of its right to a fair hearing to contest the denial or delay of a replacement issuance. Replacements shall not be made while the denial or delay is being appealed.

A household may experience such a loss more than once. There is no limit to the number of replacement issuances.

The reason for the agency denial was that the WE Energy letter did not specify the time frame of the outage and that by policy it had to be at least 4 hours.

Here the request for replacement was filed within 10 days of the loss. A letter from WE Energy was submitted to the agency on July 2, 2014. It stated that "... a power outage occurred in your neighborhood from 6/30/14 to 7/1/14 due to recent storms and weather related equipment damage." Apparently, Petitioner was told that this was not acceptable as she obtained a second letter from WE Energies that indicated that the outage had been from 6/30/14 to 7/2/14 for approximately 43 hours. That letter is dated July 14, 2014 but the date of receipt by the agency is not stamped on the letter. Further, there is no indication that Petitioner was told that this verification letter had to be submitted within a certain timeframe nor does form F-00330 indicate that this is required. Based on these circumstances, I am concluding that Petitioner has met the standards necessary for replacement of the June 30 - July 2, 2014 food loss in the amount of \$160.00.

CONCLUSIONS OF LAW

That Petitioner has met the standards necessary for replacement of FoodShare benefits that were lost due to household misfortune, i.e., a storm related power outage, which occurred on June 30 through July 2, 2014 in the amount of \$160.00.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with instructions to take the administrative steps necessary to issue a replacement for chair benefits to Petitioner and the amount of \$160 for the loss of food that occurred from June 30 to July 2, 2014 in a household misfortune. These steps must be taken within 10 days of the date of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 3rd day of September, 2014

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 3, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability